

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**COMMUNITY BUS SERVICES, INC.**

**Employer**

**and**

**Case No. 8-RC-16394**

**CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN  
& HELPERS OF AMERICA, LOCAL 337, A/W  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.<sup>1</sup>

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All full-time and regular part-time bus drivers, attendants  
and technicians employed by the Employer at its 1976 Niles  
Road, Warren, Ohio and 518 Perkins-Jones Road, Warren,  
Ohio facilities, excluding all office clerical employees,*

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<sup>1</sup> The Employer and the Petitioner argued orally on the record and the Employer filed a post-hearing brief, all of which have been duly considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

*reservationists/dispatchers, and driver supervisors, and all professional employees, guards and supervisors as defined in the Act.*<sup>2</sup>

Approximately 74 employees are in the unit found to be appropriate.

### **I. The Issue**

The sole issue presented at the hearing involves when it is appropriate to conduct the election in the above-described unit. The Petitioner contends an election should be held immediately by mail ballot. Alternatively, the Petitioner contends that if an immediate manual election is directed, the Notice of Election should be mailed to all eligible employees at their last known address. The Employer contends that the election should not be held until a substantial and representative compliment of employees is employed, which it contends will not occur until September or October, 2002, because of the seasonal nature of its business operations.

### **II. Decision Summary**

I find that the Employer's operations are seasonal in nature and that the election should be deferred until the next peak season of employment in early November, 2002.

### **III. The Facts**

The Employer is an Ohio corporation engaged in the operation of a school bus and wheelchair transit system. The Employer provides transportation for special needs students in various school districts in Trumbull and Mahoning counties pursuant to contracts with the Warren Board of Education<sup>3</sup> and the Trumbull County Educational Services Center.<sup>4</sup> The vast majority of the Employer's employees provide services

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<sup>2</sup> The unit found appropriate is in accord with a stipulation between the parties.

<sup>3</sup> That contract is effective until July 31, 2007.

<sup>4</sup> That contract is effective until June 30, 2003.

pursuant to those contracts. The Employer also provides para-transit services <sup>5</sup>pursuant to a separate contract. While the record is unclear, it appears that only one or two employees are involved in the provision of those services. The Employer has two facilities located in Warren, Ohio, both of which are involved in this proceeding.

Student transportation is only provided during defined school terms. While the exact school year calendar varies from school to school, the general parameters of the year are from the end of August through early June. Some programs, primarily those involving the transportation of pre-school students, do not start until October.

The record establishes that all but three unit employees were laid off by June 7, 2002 and will not be offered recall until at least August, 2002.. Only two mechanics and one driver are employed through the summer. The driver services para-transit routes. The mechanics perform ongoing maintenance on vehicles. <sup>6</sup>

Prior to the beginning of the school year, routes are laid out based upon information obtained from the customers. The Employer maintains one seniority list for drivers and attendants. Seniority is determined by the date that the employee received their license. <sup>7</sup> The Employer begins to recall employees in August so that they have time to "dry run" their routes. Employees are permitted to select their routes by seniority.

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<sup>5</sup> Para-transit refers to transportation provided to elderly and handicapped individuals.

<sup>6</sup> On occasion, a driver may be called in during the summer to service a field trip assignment. Such assignments are sporadic at best and there is no evidence that any field trips are scheduled for the summer of 2002. If such trips are booked, the work would be offered to drivers whose short tenure of employment precluded them for applying for unemployment benefits during the summer.

<sup>7</sup> Both drivers and attendants are required to maintain the appropriate driver's license.

Once the seniority list is exhausted, the Employer contacts individuals who were hired and trained during the summer as substitute drivers.<sup>8</sup>

All laid off employees could return to work the following school year if there is sufficient work for them. However, record testimony established that, on average, 40% of the laid off employees do not return to work the following school year.

#### **IV. Analysis**

Based upon uncontroverted record evidence, the Employer's work force is drastically reduced during the summer months. Only three of approximately 74 unit employees are currently employed. Based upon the foregoing and the record as a whole, I conclude that the Employer is engaged in a seasonal industry<sup>9</sup> and that a representative vote is not possible at the present time.<sup>10</sup>

The Board's policy is to direct elections involving seasonal employees at as near the peak of the employment season as possible in order to provide the greatest number of voters with an opportunity to cast their ballots. **Brooksville Citrus Growers**

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<sup>8</sup> The record established that the Employer recruits and trains substitute drivers during the summer. Those drivers are not promised a regular work assignment.

<sup>9</sup> In view of my finding that the Employer's business is seasonal, there is no need to address cases cited by the parties regarding the balancing test applied by the Board in case dealing with and expanding or contracting units. The Petitioner cited **MJM Studios of New York, Inc., 336 NLRB No. 129 (December 14, 2001)** in support of its contention that an immediate election should be directed. In that case, the Board found that a substantial and representative complement of employees, 52%, would remain employed in the unit. The employer's work was not deemed to be seasonal. Those facts simply do not exist in the instant case.

<sup>10</sup> See: **Dick Kelchner Excavating Co., 236 NLRB 1414 (1978)**; **Industrial Forestry Association, 222 NLRB 295 (1976)**; **The Cleveland Cliffs Iron Company, 117 NLRB 668 (1957)**

Association, 112 NLRB 707 (1955); Libby, McNeil & Libby, 90 NLRB 279, 281 (1950)<sup>11</sup>

I shall direct that an election be conducted on November 4, 2002 when it appears that the Employer's normal operations shall have resumed and a representative number of employees shall be employed in the unit found appropriate herein.<sup>12</sup> Consistent with Board law, those eligible to vote shall be those employees employed during the payroll period immediately proceeding the issuance of a notice of election by the Regional Office. Industrial Forestry Association, *supra* Because the notice of election will determine both the eligibility date and the beginning of the Excelsior period, I shall issue the notice of election on October 10, 2002. This will allow the maximum number of employees the opportunity to vote and allow the Petitioner an appropriate amount of time in which to have the eligibility list.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate on November 4, 2002 at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of the issuance of the notice of

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<sup>11</sup> The Petitioner has argued that an election should be directed immediately using mail ballots or, if a manual election is directed, the notices of election should be mailed to all eligible employees. As noted, the record establishes that as many as 40% of current employees may not accept re-employment with this Employer when contacted in August, 2002. Therefore, conducting an election by either of those means at this time might not result in ascertaining the desires of affected employees.

<sup>12</sup> I note that the parties stipulated that the Niles Road, Warren, Ohio facility is the appropriate location to conduct any election directed herein. I accept the parties' stipulation.

election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 337, A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.**

#### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the issuance of the notice of election. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional

Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by July 2, 2002.

Dated at Cleveland, Ohio this 18<sup>th</sup> day of June 2002.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

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